

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:07-cv-00016-W**

BAYTREE ASSOCIATES, INC.,)
)
 Plaintiff,)
)
 v.)
)
 DANTZLER, INC.,)
)
 Defendant and Third-Party Plaintiff,)
)
 v.)
)
 ORACLE USA, INC.,)
)
 Third-Party Defendant.)
)

ORDER

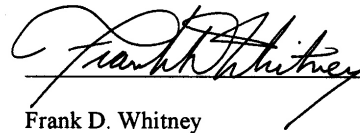
THIS MATTER is before the Court on Baytree's Motion to Quash Subpoenas for Non-Compliance with Federal Rule of Civil Procedure 45 (Doc. No. 140). The motion, initially filed on behalf of Baytree, challenges the validity of four subpoenas issued by Dantzler to four individuals who are not parties to this action and all of whom reside in the State of Florida. Baytree, however, does not have standing to assert the rights of a nonparty. See U.S. v. Idema, 2005 WL 17436, *3 (4th Cir. 2005) (citing Hertenstein v. Kimberly Home Health Care, Inc., 189 F.R.D. 620, 635 (D.Kan.1999); 9A Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 2459 (1995). Accordingly, following inquiry by the Court as to whether Baytree had permission to act on behalf of those individuals named in the subpoenas, counsel for Baytree supplemented its motion to show it had authority to act on behalf of three of the four individuals: Marc Feller, David Johnson, and Eddie Pitts. (Doc. No. 144) The fourth individual, Robert Shaw, was unavailable and no longer resided at the last known address, and is therefore not the subject of the instant motion.

As explained in the original motion, the three subpoenas before the Court clearly violate Rule 45 of the Federal Rules of Civil Procedure because a nonparty witness outside this state and not within the one-hundred mile range from this Court cannot be compelled to appear at trial. Counsel for Dantzler had no authority whatsoever to subpoena these three individuals, nor has Dantzler presented *any* argument to the Court justifying the issuance of the subpoenas at bar. Therefore, pursuant to Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure, the Court hereby quashes the subpoenas issued to Marc Feller, David Johnson, and Eddie Pitts.

IT IS THEREFORE ORDERED that Baytree's Motion (Doc. No. 140) AS AMENDED by the supplemental filing (Doc. No. 144) is GRANTED.

IT IS SO ORDERED.

Signed: November 26, 2008

A handwritten signature in cursive script, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
United States District Judge

